

**AN ORDINANCE  
BY COUNCILMEMBERS CLAIR MULLER AND CEASAR MITCHELL  
AS SUBSTITUTED BY CITY UTILITIES COMMITTEE**

**AMENDING CHAPTER 138, DIVISION 5 “VENDING DEVICES  
AND TELEPHONES” OF THE CODE OF ORDINANCES TO  
UPDATE THE REQUIREMENTS NECESSARY TO  
INSTALL/PLACE VENDING BOXES IN THE CITY’S RIGHT-OF-  
WAY; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta is charged with the responsibility of maintaining the public rights-of-way; and

**WHEREAS**, newspaper racks and vending devices in the public rights-of-way should be permitted by the City of Atlanta; and

**WHEREAS**, there has been an escalation of newspaper racks and vending devices placed in the public right-of-way without the required permit; and

**WHEREAS**, the unregulated number of vending devices in the public rights-of-way causes public safety and public hazards to the pedestrian users of these rights-of-way; and

**WHEREAS**, this proliferation of un-permitted devices has created unsafe and unappealing streets and sidewalks for city residents and businesses; and

**WHEREAS**, in any regulation of public space, it is important to protect the First Amendment rights of citizens by narrowly tailoring such regulation and by providing ample areas for those citizens to engage in such exercise of speech; and

**WHEREAS**, a complete review and analysis of the permit process and the policies associated with the issuance of a permit to place vending devices in the public right-of-way has been undertaken to result in a comprehensive set of guidelines as to how the City should proceed.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:**

**SECTION 1:** That “Vending Devices and Telephones” Section 138-44—138-53 of Article II, Division 5 of the Code of Ordinances is deleted in its entirety and shall be replaced with the following:

DIVISION 5. PUBLICATION VENDING DEVICES

**Section 138-44. Name of ordinance.**

This Division shall be known as the Publication Vending Device Ordinance.

**Section 138-45. Purpose and criteria of division.**

- (a) The City of Atlanta (hereinafter the "City") hereby finds that publication vending devices placed and maintained on the streets, sidewalks or other public rights-of-way, absent reasonable regulation, unreasonably interferes with the use of such streets, sidewalks or public rights-of-way and may be hazardous to persons or property.
- (b) The City further finds that streets, sidewalks or other public rights-of-way are historically associated with the sale and distribution of newspapers and other publications, and that access to use of these areas for such purposes should not be denied except where such use unreasonably interferes with the use of these areas by pedestrians or vehicular traffic, or where such use presents a hazard to persons or property.
- (c) The City has determined that a reasonable accommodation of these competing interests can be achieved by adoption of this Division, which regulates the placement and maintenance of unmanned vending machines, displays and newsracks, collectively referred to hereinafter as "publication vending devices" or "PVDs," and the distribution and sale of newspapers and other publications by similar means.

**Section 138-46. Definitions.**

The following terms, when used in this Division, will have the following meanings:

*Adoption date* means the date upon which this Division is approved by the Mayor of the City, after the adoption by the City Council.

*Publication* means any newspapers, news periodicals, news publications, other printed news materials, non-news papers, periodicals or publications intending to convey information to the general public in printed form.

*Publication Vending Device* means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display, distribution or sale of publications, and shall be referred to herein as "PVD."

*Public sidewalk* means that portion of the public right-of-way designed or ordinarily used for pedestrian travel.

*Public street* means that portion of the public right-of-way designed or ordinarily used for vehicular travel.

*Right-of-way* means the entirety of any public street area, including the public roadway and adjacent pedestrian ways.

**Section 138-47. PVD identification.**

Each PVD shall have permanently affixed to it, in a location and manner that is readily visible, identification that shall include the name, address and telephone number of the distributor and, if applicable, representative of the publication. Identification information shall be kept current at all times.

**Section 138-48. Permit.**

- (a) *Criteria for permit.* No permit shall be denied, nor shall the applicant for a permit be given less favorable treatment, on account of any message that may be conveyed by the publication to be contained in the PVD.
- (b) *Permit pre-condition.* It shall be unlawful for any person to place, locate, operate or maintain any PVD in or on any part of the Public Sidewalk, Public Street or Right-of-Way, without first obtaining a permit therefor from the Commissioner of Public Works.
- (c) *Permit applications.* All Permit Applications received by the Commissioner of Public Works will be awarded on a first come, first serve basis in accordance with the provisions of this Division, except for those PVDs currently Permitted or for which an acceptable, completed Application ("Pending Permit"), as determined by the Commissioner, is pending on the Adoption Date.
- (d) *Current and pending permittees.* To ensure fair and impartial treatment of all current Permittees or Pending Permittees, all Permits for currently Permitted PVDs will expire as of the Adoption Date of this Division. To preserve PVDs currently Permitted, or for which an acceptable, completed Application is pending on the Adoption Date, as determined by the Commissioner, the Permittee or Pending Permittee must strictly comply with the following requirements within the established time frames:
  - (1) *Letter of acknowledgement.* Each Permittee and Pending Permittee must submit in writing to the Commissioner, within fifteen (15) calendar days of the Adoption Date, a letter setting forth the express intent to preserve, retain and permit in accordance with the provisions of this Division, all PVDs currently Permitted or for which an acceptable, completed Application is pending on the Adoption Date,

as determined by the Commissioner. The letter must also set forth the specific PVDs and their existing/proposed locations that the Permittee and Pending Permittee do not intend to preserve, retain and permit.

- (2) *Payment of fees.* Each Permittee and Pending Permittee must submit to the Commissioner, within thirty (30) calendar days of the Adoption Date, applicable fees for each PVD and locations specified in the above-mentioned letter for which a Permit is desired to be retained or issued, all in accordance with the provisions of this Division.
- (e) *Applications for permits.* Applications for all Permits for the placement of PVDs must contain the following:
- (1) The Applicant's name and address at which any notices required by this Division shall be deemed received when placed in an envelope and deposited in the United States mail with adequate postage affixed.
  - (2) The telephone number of the Applicant at which notice of any repairs or other actions deemed by the City to be necessary for permitted PVDs may be received.
  - (3) The total number of and exact location of each PVD to be permitted, shown on a detailed, dimensional drawing, including measurements, and a survey, if requested by the Commissioner.
  - (4) Names of the Publications to be contained in each Publication Vending Device.
  - (5) Type or brand of Publication Vending Device, including an illustration and description of the PVD and mount.
  - (6) An agreement to provide insurance and of indemnification, as required by this Division.
  - (7) A certification that the Applicant has reviewed, understands and will comply with all requirements of this Division.
  - (8) An agreement by the Applicant promptly to inform the Commissioner in writing of any changes in the information contained in the Applicant's Application, including the Applicant's name, address or telephone number, and a further agreement that failure to do so shall constitute grounds for the revocation of the Permit, the removal, storage and sale of the PVD, in accordance with this Division, and the exercise by the City of any other remedies available under this Division, the City's Code of Ordinances or other applicable law.
- (f) *Review of applications.* Applications for all Permits for the placement and maintenance of PVDs will be reviewed, and if in compliance with all requirements of this Division, may be approved by the Commissioner of Public Works within sixty

(60) calendar days of receipt of such Applications. Only one (1) Permit will be required for the placement of any number of PVDs, provided that the Application clearly states the proposed location of each.

- (g) *Issuance of permit.* Upon a finding by the Commissioner that the Applicant is in compliance with the provisions of this Division, the Commissioner may issue a Permit for the installation of the PVDs, or portion thereof, covered by the Application by the Applicant. Nothing in this Division will prevent the Commissioner from approving certain proposed PVDs in an Application and denying other proposed locations for PVDs, if the Commissioner deems those PVDs to be denied to not be in compliance with this Division.
- (h) *Permit sticker.* If an Application is approved as to any PVD, the Commissioner will issue a Permit sticker for that PVD. The Permit sticker issued after the Adoption Date of this Division will be applied to the applicable PVD by the Department of Public Works and must be externally visible when affixed to the upper right corner of the door of the Publication Vending Device.
- (i) *Denial of permit.* If a Permit for the PVD location applied for is denied, the Applicant will be notified within sixty (60) calendar days of the City's determination to deny the Application. The Applicant will be advised in writing of the specific cause for the denial. The Applicant may apply for an equal number of alternative locations within thirty (30) calendar days of a denial at no additional Permit fee.
- (j) *Additional permits.* If at any time after initial Application for a Permit, a Permittee wishes to install additional PVDs, then a new and separate Application must be submitted in accordance with this Division. Additional Permit fees must be paid in accordance with this Division.

**Section 138-49. Fees.**

- (a) *Permit fee.* The Permit Fee is ten dollars (\$10) per PVD site requested and shall be due at the time of application for Permit.
- (b) *PVD removal and storage fee.* Non-conforming PVD will be subject to removal and if removed shall be subject to a removal and storage fee.
  - (1) *Removal fee.* Fees for removal of non-conforming vending devices shall be assessed based on the bi-annual estimated cost for the time, material and equipment used to remove the offending PVDs. For the initial year, this cost is set at one-hundred sixty dollars (\$160).
  - (2) *Storage fee.* Fees for impounding and storage would be assessed a fee of ten dollars (\$10) per PVD per day.
- (c) *Use of permit fees.* All of the above fees will be used to defray administrative expenses relating to this Division only.

**Section 138-51. Insurance and bond requirements.**

*Insurance.* Prior to the issuance of a Permit by the Commissioner, the Applicant must furnish to the City the following:

- (1) *Insurance policy limits.* Evidence, acceptable to the City's Risk Management Division, that the Applicant has public liability insurance, with the City named as an additional insured, in an amount not less than \$100,000 minimum liability combined single limit (bodily injury and property damage) per person and per occurrence.
- (2) *Term of insurance.* Insurance under this Section must run continuously with the presence of the Applicant's PVD in permitted locations, and any termination or lapse of such insurance shall be a violation of this Division.
- (3) *Fines*
  - a. Failure to timely continuously maintain the required insurance shall result in the imposition of a fine of double the Permit fee per PVD which, if not paid within thirty (30) calendar days of written notice from the City, shall result in the PVD being deemed abandoned and subject to removal as set forth in this Division.
  - b. The City may also pursue other appropriate remedies pursuant to the City's Code of Ordinances or other applicable law.

**Section 138-52. Hold-harmless agreement.**

Every Permittee that installs, places or maintains a PVD on a Public Sidewalk in the City must include in its Application a written statement satisfactory to the City Attorney in which the Permittee/Applicant agrees to indemnify and hold harmless the City, its agents, representatives, officers, commissioners, directors and employees, from any loss of liability or damage, including expenses and costs, for bodily or personal injury and for property damage sustained by any person as a result of the Permittee's installation, placement or maintenance of a PVD on a Public Sidewalk within the City.

**Section 138-53. Projection onto public streets.**

It shall be unlawful for any person to install, place or maintain any PVD which, in whole or in part, projects onto, into or over any part of a Public Street or which rests, in whole or in part upon, along or over any portion of any Public Street.

**Section 138-54. Dangerous condition or obstruction.**

It shall be unlawful for any person to install, place or maintain any PVD which, in whole or in part, rests upon, in or over any Public Street or any Public Sidewalk when such installation, placement or maintenance endangers the safety of persons or property or when the site or location is used for public utility purposes, public transportation

purposes or other governmental uses, or when such PVD unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress or egress of any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near the location.

**Section 138-55. Standards for installation and maintenance of PVDs.**

**(a) *Standards.*** PVDs must:

- (1) Be standard Sho-Rack galvanized material model 100, or equivalent;
- (2) Weigh a minimum of seventy-five (75) pounds and may be fastened to one another in such a manner that they cannot be easily moved or toppled or otherwise pushed or thrown into a public right-of-way or Public Street;
- (3) Not exceed five (5) feet in height, thirty (30) inches in width or two (2) feet in thickness;
- (4) Not be fastened to the Public Sidewalk without prior approval from the Commissioner of the Department of Public Works; and
- (5) Abut one another and must be located so as to abut one another beginning at a location not less than thirty (30) feet from the intersection point of the projected curblines of any intersection.
  - a. No group of PVDs may extend for more than thirteen (13) feet.
  - b. There must be a space of fifty (50) feet between groups of PVDs.

**(b) *Prohibitions.*** PVDs shall not be located:

- (1) Within:
  - a. Five (5) feet from the nearest outer edge of any crosswalk;
  - b. Twenty (20) feet from any fire hydrant, fire call box, or police call box;
  - c. Five (5) feet from the nearest outer edge of any driveway;
  - d. Two (2) feet of signs, parking meters, streetlights, or utility poles;
  - e. Fifteen (15) feet of any designated bus stop sign or post;
  - f. Fifty (50) feet of any other PVD on the same side of the street containing the same edition of the same publication; and
  - g. The street furniture zone, as described by the pedestrian space plan (sheets 137 and 138 of the City official zoning map), no closer than eighteen (18) inches from the back of the nearest curb of the road and must be positioned to provide for a minimum of nine (9) feet of unobstructed sidewalk, so as not to impede reasonable pedestrian traffic on sidewalks;
- (2) At any location whereby the area of unobstructed Public Sidewalk for the passage of pedestrians is reduced to less than six (6) feet;
- (3) In such a manner that:

- a. hinders egress to parked vehicles in marked parking stalls;
  - b. impairs bus, taxicab, truck or passenger loading zones; or
  - c. that blocks historic markers, benches, or other public improvements;
- (4) On Public Sidewalks with a width that is less than twelve (12) feet;
- (5) In a position in which it is chained to any property not owned by the owner or lessee of the PVD or to any permanently fixed object; however, PVDs, when placed side by side, may be chained or otherwise attached to one another.
- (6) PVDs may be placed next to each other, provided that no group of PVDs shall extend more than six (6) feet.
- (c) *Maintenance.* Each PVD must be maintained in a state of good repair at all times.
- (d) *Advertising prohibited.* It shall be unlawful for any person to use a PVD for advertising or publicity purposes other than that dealing with the display, sale or purchase of the Publications sold therein.

**Section 138-56. Enforcement procedures non-conforming PVDs; removal/storage.**

- (a) *Effective date of enforcement provisions.* Provisions of this Division shall become effective immediately as provided by law, provided however, an existing Permittee shall have three (3) months following the Adoption Date to come into compliance with the terms of this Division, except for those terms in the provisions titled "Letter Of Acknowledgment" and "Payment of Fees".
- (b) *Removal of PVDs; procedure.* In the event a PVD is found to have been installed without a Permit, the City may remove the PVD immediately upon discovery of the violation and the owner of such PVD assessed for the cost of removal and storage. In all other instances where a PVD is found to violate a provision of this Division, it may be removed only after a notice of the violation is sent to the Permittee by certified mail, return receipt requested, and the Permittee fails, within ten (10) calendar days of the date of the notice to correct or cure the violation, unless, at such time as the notice, the Commissioner issues a written Order stating that the PVD constitutes a serious and imminent hazard to the public safety, in which case the PVD may be removed immediately. In the later event, a copy of the Commissioner's Order, specifying the reason or reasons for the immediate removal of the PVD, shall be sent by certified mail, return receipt requested, to the Permittee.
- (c) *Sale of PVDs.* Any PVD removed from the public right-of-way shall be removed and stored at the cost of the Permittee. The City must be reimbursed by the respective Permittee for all costs incurred in the removal and storage of all Publication Vending Device(s) removed from the public right-of-way by the City. A removal fee of one-hundred sixty (\$160.00) and a storage fee of ten (\$10.00) are established per Publication Vending Device. The City is authorized to sell a removed PVD at public sale if the Permittee does not pick up the PVD within ninety (90) calendar days from the date of removal. Ten (10) days prior to sale, the City shall advertise notice of sale



in a daily newspaper of general circulation in the City. Out of the proceeds of the sale of any Publication Vending Device, all unpaid removal and storage costs shall be paid after the payment of the advertisement cost and the remaining balance of the sale proceeds shall be retained by the City in a fund in the possession of the City for a period of one (1) year, unless claimed earlier by the Permittee. After the expiration of one (1) year, any sums remaining from the sale of a PVD in accordance with the provisions of this Section, if unclaimed by the Permittee of the Publication Vending Device, shall become the property of the City.

- (d) *Revocation of permit.* The Permit applicable to any permitted, but removed, PVD pursuant to this Division will be deemed revoked upon removal.

**Section 138-57. Abandoned PVDs.**

- (a) *Assumed abandonment.* The City may deem the PVD abandoned and subject to removal as set forth in this Division and the City may exercise any other remedies available to it under the City's Code of Ordinances or applicable law if any PVD installed pursuant to this Division does not contain the publication specified for
- (1) Ten consecutive business days for a normal publishing cycle of daily or semi-weekly;
  - (2) Twenty consecutive business days for a normal publishing cycle of a weekly or bi-weekly; or
  - (3) Thirty consecutive business days for a normal publishing cycle of occasional or less frequent than bi-weekly; unless the distributor and/or representative establishes that the PVD has remained empty due to an extraordinary interruption or temporary nonpublishing period.
- (b) *Voluntary abandonment.* In the event a Permittee desires to voluntarily abandon a PVD, the Permittee must notify the Commissioner in writing, completely remove the PVD and mount, and restore the public right-of-way to a safe condition, leaving no holes or projections in the mounting surface.

**Section 138-58. Reserved.**

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

AN ORDINANCE BY

COUNCILMEMBER CLAIR MULLER

02-○-1897

**AMENDING CHAPTER 138, DIVISION 5  
"VENDING DEVICES AND TELEPHONES" OF  
THE CODE OF ORDINANCES TO UPDATE THE  
REQUIREMENTS NECESSARY TO  
INSTALL/PLACE VENDING BOXES IN THE  
CITY'S RIGHTS-OF-WAY; AND FOR OTHER  
PURPOSES.**

**WHEREAS**, the City of Atlanta is charged with the responsibility of maintaining the public rights-of-way; and

**WHEREAS**, newspaper racks and vending devices in the public rights-of-way should be permitted by the City of Atlanta; and

**WHEREAS**, there has been an escalation of newspaper racks and vending devices placed in the public rights-of-way without the required permit; and

**WHEREAS**, this proliferation of un-permitted devices has created an eyesore for city residents and businesses; and

**WHEREAS**, the unregulated number of vending devices in the public rights-of-way causes public safety and public hazards to the pedestrian users of these rights-of-way; and

**WHEREAS**, a complete review and analysis of the permit process and the policies associated with the issuance of a permit to place vending devices in the public rights-of-way should result in a comprehensive set of guidelines as to how the City should proceed.

**NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA** as follows:

**SECTION 1:** That the "Vending Devices and Telephones" Section 138-44 through 53 of Article II, Division 5 of the Code of Ordinances is deleted in its entirety and the following is inserted in lieu thereof the following:

**SECTION 2:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.